erty were not affected by failure to record, until after their judgments were recovered, an instrument changing date of notes secured by mortgage, it not being necessary to record such instrument, as the change of date in no way affected the debt secured, but was a mere change in the form of the evidence of the debt.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 38, 42, 77.]

**3. Mortgages (§ 55*)—Executing before Existence of Debt**—It being a common business practice to execute securities in contemplation of a loan, that a deed of trust was made to secure notes dated prior to the actual making of the loan does not invalidate the deed of trust.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 17, 39.]

**4. Fraudulent Conveyances (§ 210*)—Subsequent Creditors with Notice Cannot Complain.**—Subsequent creditors of purchaser of property conveyed subject to a mortgage of record, having extended credit to the debtor, and their judgments having been recovered with constructive notice of the nature and extent of their debtor's interest in the mortgaged property, cannot complain of the mortgage as being fraudulent as to them.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 365, 374.]

Appeal from Circuit Court, Washington County.

Bill by C. B. Van Nostrand & Co., Incorporated, and others, against the Virginia Zinc & Chemical Corporation, Limited, and another. An injunction was granted, an account ordered and returned, and exceptions filed thereto by both plaintiffs and defendants. From a decree settling the principles of the case, overruling plaintiffs' and sustaining defendants' exceptions to the commissioner's report, reforming the report, and fixing liens and priorities, and postponing the judgment liens of plaintiffs to those of defendants, and decreeing a sale of the property to discharge the liens, plaintiffs appeal. Decree affirmed, and cause remanded.

*St. John & Gore,* of Bristol, Tenn., and *Henry Roberts,* of Bristol, Va., for appellants.

*Price & Pennington,* of Bristol, Va., for appellees.

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## ROARING FORK R. CO. *v.* LEDFORD'S ADM'R.

Sept. 17, 1919.

[101 S. E. 141.]

**1. Railroads (§ 383 (1)*)—Contributory Negligence of Person on Track.**—One walking along track near sawmill making so much

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

noise that person on track would not be likely to hear bell of approaching engine, who was looking toward the side and backward, instead of to the front, where engine was approaching, held grossly negligent.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 370; 11 Va.-W. Va. Enc. Dig. 591.]

**2. Railroads (§ 355 (5)*)—Licensee to Go on Track.**—Sawmill employee, walking along track near millyard, toward car of lumber for purpose of running car down on lumber track and unloading it, held a licensee.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 571.]

**3. Railroads (§ 390*)—Contributory Negligence; Last Clear Chance Doctrine.**—Trainmen approaching portion of track upon which they might reasonably expect persons to be have duty of keeping reasonable lookout to observe whether there is person on track in a position or condition of obvious unconsciousness to peril, in order that they may discharge duty imposed by last clear chance doctrine, of saving any such person, such doctrine applying, not only when position or condition of such person has been actually discovered, but also, where by exercise of ordinary care it could have been discovered in time to have avoided the accident.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 575.]

**4. Railroads (§ 398 (4)*)—Contributory Negligence; Sufficiency of Evidence.**—In action for death of a person on track, evidence held to show that enginemen, by maintaining a reasonable lookout, could have observed deceased in a position and condition of obvious unconsciousness of his peril, in time to have stopped the engine before it reached him.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 573.]

**5. Railroads (§ 390*)—Contributory Negligence; Last Clear Chance.**—Where enginemen, by maintaining reasonable lookout could have observed person on track in position and condition of obvious unconsciousness to his peril, in time to have stopped the engine before it struck him, railroad is liable, notwithstanding his gross negligence.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 575.]

Error to Circuit Court, Wise County.

Action by Ledford's Administrator against the Roaring Fork Railroad Company. Judgment for plaintiff, and defendant brings error. Affirmed.

*Irvine & Stuart,* of Big Stone Gap, for plaintiff in error.

*Davidson & Robinett* and *Pennington & Cridlin,* all of Jonesville, for defendant in error.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.